

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications)
and Energy on its own motion pursuant to G.L. c. 159,)
§§ 12 and 16, into Verizon New England Inc., d/b/a) **D.T.E. 01-34**
Verizon Massachusetts' provision of Special Access)
Services.)

REPLY BRIEF OF VERIZON MASSACHUSETTS

Verizon Massachusetts (“Verizon MA”) responds in this Reply Brief to unsubstantiated allegations by AT&T Communications of New England, Inc. (“AT&T”), WorldCom, Inc. (“WorldCom” or “WCOM”) and XO Massachusetts, Inc. (“XO”) regarding the quality of Verizon MA’s special access services in Massachusetts.¹ The Parties seek to impose a comprehensive and onerous set of performance metrics, service penalties and audit requirements on Verizon MA’s provisioning of special access services. However, as demonstrated below and in Verizon MA’s Initial Brief,² there is no credible evidence to support their claims that such action is warranted.

¹ For purposes of this Reply Brief, AT&T, WorldCom and XO may be collectively referred to as the Parties.

² In its Initial Brief, Verizon MA addressed in detail the major issues raised by the Parties. However, there is one correction regarding Verizon MA’s computation of “On-Time Provisioning” as described in its Initial Brief. VZ MA Initial Brief, at 9 n.9, 23 n.27. The data for the denominator (*i.e.*, the total number of DS1 circuits completed per month) is found in Exh. DTE-VZ 5-1, updating WCOM/ATT-VZ 1-3 - not WCOM/ATT-VZ 1-2, as incorrectly identified in the Initial Brief. This does not impact any of Verizon MA’s calculations in its Initial Brief because they were based on

The Parties' allegation that Verizon MA has discriminated in favor of its end-user customers rests solely on AT&T's clearly erroneous manipulation of data. What the special access service results actually show is that Verizon MA is currently providing excellent service to its carrier (*i.e.*, wholesale) customers. VZ MA Initial Brief, at 20-23. Moreover, although a direct comparison between carrier and end-user customer requests is not feasible because of significant – and necessary - differences in Verizon's *processes* for serving each customer group, Verizon MA's special access results for its end user (*i.e.*, retail) customers are consistently below those for carrier customers. VZ MA Initial Brief, at 35-37. Accordingly, the Parties' allegations of poor service and discriminatory conduct are without merit.

The Parties' request that the Department adopt specific performance measurements, audits and financial penalties in Massachusetts is also unreasonable and unnecessary because Verizon MA provides only about 100 intrastate special access circuits annually. Approximately 99.6 percent of Verizon MA's special access circuits are jurisdictionally interstate. VZ MA Initial Brief, at 4. Those circuits are subject to the exclusive jurisdiction of the Federal Communications Commission ("FCC"), and the Department has already ruled that it is preempted from investigating and regulating quality of service for federally tariffed special access services. *August Order*, at 10-11; VZ MA Initial Brief, at 6-7.

The Department should not allow the Parties to use this proceeding to exact unnecessary and burdensome performance reporting requirements on Verizon MA's intrastate special access services. To the extent that the Parties' concerns relate to interstate services, the

the correct, updated figures in WCOM/ATT-VZ 1-3.

FCC – not the Department - is the proper forum for the Parties to address those concerns. In fact, the FCC has a pending investigation (CC Docket 01-321) in which it is looking into carrier special access service quality claims. VZ MA Initial Brief, at 5.

Finally, AT&T's and XO's request that the Department overturn the FCC's "safe harbor" rules restricting the conversion of special access circuits to unbundled network elements ("UNE") is completely without merit. The "safe harbor" rules have nothing to do with service quality, but are FCC requirements relating to the conversion of existing special access services to the Expanded Extended Loop ("EEL") unbundled element combination. The Parties' request seeks a ruling which is beyond the Department's authority and not within the scope of this proceeding. Accordingly, the Department should reject their claim.

I. ARGUMENT

A. AT&T Distorts the Record Evidence By Comparing Wholesale Access and Retail Non-Access Special Services To Assess Verizon MA's Alleged Discriminatory Conduct.

The Parties contend that Verizon MA has discriminated against carrier customers in its provision of special access services in Massachusetts. AT&T Initial Brief, at 14-19; WCOM Initial Brief, at 8-10; XO Initial Brief, at 8-10. To support their claims, the Parties rely solely on AT&T's flawed analysis of Verizon MA's service results – an analysis that AT&T's witness admitted should not have excluded end-user *access* service results from the retail calculations. Tr. 494-95. As the special access services data demonstrates,³ Verizon MA engaged in *no*

³ Verizon MA limited its review to DS1 circuits because they are the circuit category used by AT&T in its testimony and Initial Brief. AT&T Initial Brief, at 14-19. Verizon MA does not agree with AT&T's premise that because the same underlying facilities may be utilized for special access services provided to carrier and end-user customers, a direct comparison is feasible. AT&T Initial Brief, at 14-15. This ignores the significant, inherent *process* differences in the provisioning of

discrimination. To the contrary, Verizon MA provided *superior* service to its special access carrier customers.

First, AT&T states that Verizon MA's on-time provisioning for the 15-month period (January 2001 through March 2002) is 85.87 percent and 99.19 percent for carrier and end-user customers, respectively. AT&T Initial Brief, at 16. The retail calculation, however, includes only non-access special services. This results in an overstatement of Verizon MA's performance to end-user customers, since retail special access service results are inappropriately excluded from AT&T's purported analysis. The special access end-user (retail) results for the same 15-month period is 70.77 percent. Moreover, as discussed in Verizon MA's Initial Brief, service results for on-time provisioning for both end-user and carrier customers have improved considerably in the first quarter of 2002, as a result of Verizon's implementation of performance initiatives in 2001. VZ MA Initial Brief, at 9, 23-24.

AT&T also erroneously determines the on-time provisioning results in Massachusetts for selected individual months. For example, AT&T indicates that the results for April 2001, are 77.81 percent and 98.18 percent for carrier and end-user customers, respectively. AT&T Initial Brief, at 16. Likewise, the July 2001 results are 75.14 percent for carrier customers and 99.28 percent for end-user customers. AT&T Initial Brief, at 16-17. Once again, AT&T manipulates the data and inappropriately includes in its calculation only the retail *non-access*

services to these customer groups, which are tailored to meet individual customer needs. VZ MA Initial Brief, at 29-34. Moreover, even if the same facilities may be used, the underlying services may not be the same, and could have different service characteristics and functions. *See e.g.*, Exh. DTE-VZ-5-13 (for a list of special access and non-access special services). What AT&T's diagram shows is that carriers, such as AT&T, and Verizon MA can provide DS1 circuits to end users directly within the LATA. Exh. ATT 9. It does not demonstrate that all special access and private line services are the same and can be processed and provisioned in an identical manner.

service results. In doing so, AT&T ignores that the *special access* on-time provisioning results for end-user (retail) customers were actually below the carrier customer results for both months, *i.e.*, 51.31 percent in April 2001, and 70.68 percent in July 2001. Therefore, AT&T's analysis is not only fatally flawed, but also disingenuous.⁴

Second, AT&T alleges discriminatory conduct by Verizon MA based on the average offered and completed intervals for special access services. AT&T Initial Brief, at 14-16. In this proceeding, Verizon MA provided substantial evidence relating to its provisioning process for carrier and end-user customers. VZ MA Initial Brief, at 23-34. As Verizon MA explained in detail, a direct comparison of the Company's provision of special access services to those customer groups is not feasible because of significant *process* differences. Exh. DTE-VZ 5-31. Those process differences are "customer-driven," meaning that they reflect the needs and the level of sophistication of the particular customer group and cannot be "homogenized" to suit both carrier and end-user customers. Tr. 322; AT&T Initial Brief, at 3; WCOM Initial Brief, at 10. Therefore, data relating to average intervals offered and completed cannot reasonably be measured and compared in the manner described by AT&T.

To account for the *process* differences, AT&T adds another seven days to the end-user (retail) interval, contending that this is comparable to the five to seven-day period for carriers awaiting a Firm Order Confirmation ("FOC") from Verizon MA. AT&T Initial Brief, at 23. Such a calculation is totally arbitrary and unreasonable, and completely ignores the substantial

⁴ It is also ironic – and quite illogical – that while AT&T's Initial Brief argues that special access and special services are the same because the underlying facilities are the same, AT&T completely ignores the retail special access results in its alleged data comparisons. AT&T Initial Brief, at 14-16. That glaring omission is inexplicable based on the fact that the Department's investigation relates to Verizon MA's special access services – not local, non-access services.

negotiations required by Verizon MA when directly provisioning services to the end-user customer. VZ MA Initial Brief, at 25-26. Even AT&T admits that it has been “working with the end user for sometime in order to move the process to the point that a fully detailed ASR [Access Service Request] can be completed and submitted.” Exh. ATT 2, at 7 n.2.

Merely adding seven days to the interval process does not reasonably or accurately account for the ongoing (and often lengthy) negotiations at multiple stages in the process, as illustrated by Verizon MA’s retail provisioning flow charts. VZ MA Initial Brief, at 30-33; Exh. VZ MA 3, at Attachment B. Such an adjustment is not calculable because it is an unknown variable, based on the individual end-user customer needs, and cannot be quantified by Verizon MA. VZ MA Initial Brief, at 33; Tr. 124; 172-73. Accordingly, AT&T’s proposed “adjustment” to the average interval data does not adequately capture the various differences in Verizon MA’s carrier and end-user customer provisioning process. VZ MA Initial Brief, at 30-34; Exh. DTE-VZ 5-31.

Not only is AT&T’s contention that the interval can be adjusted to enable a direct comparison of carrier and end-user customers service results wrong, but – as noted above – its exclusion of end-user (retail) access data to support its point is totally inappropriate. For example, whereas the retail non-access average completed interval for the 15-month period (January 2001 to March 2002) is 18.03 days (plus seven days is 25.03), the retail access average is 23 days (plus seven days is 30). Exh. ATT 7.

Even for the first quarter 2002, a gap continues to exist between the retail access and non-access results for average completed intervals.⁵ By using *only* retail non-access data, AT&T skews its analysis to create a false perception that Verizon MA is discriminating against carrier customers. Therefore, AT&T's alleged comparison is fallacious.

Finally, AT&T incorrectly excludes end-user (retail) special access results from its calculation of installation quality in Massachusetts. AT&T Initial Brief, at 24-26. The 15-month average for installation trouble reports received for retail access is 23.12 percent, as compared with 1.33 percent for retail non-access and 3.23 percent for carrier (wholesale) customers.⁶ RR-AG-ATT 1. Those maintenance results clearly contradict the Parties' allegations that Verizon MA's provision of special access services for carrier customers is inferior to end-user customers.⁷ Accordingly, despite the Parties' attempts to misrepresent the data, there is no credible evidence of discriminatory conduct by Verizon MA, as the Parties falsely allege.

⁵ The first quarter 2002 results for average completed interval are 23.6 days (January 2002), 18.4 days (February 2002) and 16.9 days (March 2002) for end-user customer (retail) special access in Massachusetts. Adding the seven days proposed by AT&T produces a three-month average for 2002 of 24 days for retail access. See Exh. DTE-VZ 5-1, updating WCOM/ATT 1-18. This is greater than the first quarter 2002 average completed interval for retail non-access, *i.e.*, 22.76 days, and thus closer to the carrier (wholesale) access average completed interval for the same period. In addition, AT&T overstated the carrier (wholesale) results. During the first quarter of 2002, the correct figures are 27.4 (January 2002), 25.9 (February 2002), and 23.6 (March 2002), yielding a three-month average completed interval of 25.6 days for wholesale access, which is nearly the same number of days as retail access. See RR-DTE-VZ 3. Nevertheless, as discussed in its Initial Brief, to compare average interval days is inappropriate because of the significant process differences for the customer groups. VZ MA Initial Brief, at 30-34.

⁶ Verizon MA calculated those averages using, as the numerator, the data provided in Exh. DTE-VZ 5-1, updating WCOM/ATT 1-22, and RR-AA-VZ 6. The denominator is found in Exh. DTE-VZ 5-1, updating WCOM/ATT 1-3.

⁷ AT&T is also wrong in asserting that Verizon MA failed to follow instructions by including test-oks, no troubles found, etc. in its end-user customer installation trouble report figures. AT&T Initial Brief, at 25-26. Verizon MA previously explained that although the Company excluded those categories from the end-user (retail) customer data provided in accordance with the criteria established by WorldCom and AT&T's discovery requests, it includes them in its internal retail

B. There Is No Basis For the Parties' Claims that the Department Should Impose Special Access Performance Reporting Requirements and Penalties on Verizon MA, Or Implement Process Changes to Verizon's Provisioning Systems.

As discussed above, the Parties fail to demonstrate that Verizon MA has discriminated between end-user and carrier customers in its provision of special access services in Massachusetts. The record further shows that Verizon MA is providing quality special access services to carriers, and has adequate procedures in place to monitor, investigate, and correct service-related issues. VZ MA Initial Brief, at 26-28. In addition, Verizon MA voluntarily provides more than 50 carriers with customized, performance reports relating to special access services. VZ MA Initial Brief, at 4. Therefore, contrary to the Parties' claims, there is no need for the Department to establish burdensome performance reporting mechanisms in Massachusetts.

The Parties contend that performance metrics, a Performance Assurance Plan ("PAP"), audits, and financial penalties must be put in place because of the lack of competition in the special access services market – and Verizon MA's ability to maintain market power. AT&T Initial Brief, at 6-7; WCOM Initial Brief, at 2-5; XO Initial Brief, at 6-7. Not only are the Parties' claims unsubstantiated, they should not be determinative of the Department's findings in this matter.

As addressed in Verizon MA's Initial Brief, competition in the special access services market is well-established, and recently recognized by the FCC in its grant of pricing flexibility for such services throughout Massachusetts. VZ MA Initial Brief, at 10-14. Carriers, such as

reports. VZ MA Initial Brief, at 44; Tr. 276-77.

WorldCom, admit that they do not rely solely on Verizon MA, but rather obtain such services from alternative providers and, in some cases, self-provision. VZ MA Initial Brief, at 14-17. However, carriers refuse to quantify this – even for the Department on a confidential basis. Tr. 439-47.

The Parties also incorrectly assert that Verizon’s ability to increase some of its interstate special access rates following the FCC’s grant of pricing flexibility is evidence of Verizon’s market power. AT&T Initial Brief, at 11-13; XO Initial Brief, at 7. That argument does not withstand scrutiny. While some rates that were artificially low due to regulatory decisions were increased, other Verizon special access rates were decreased during the same time frame.⁸ In reality, the special access marketplace is vigorously competitive, and these rate adjustments alone are not indicative of market power, contrary to those Parties’ unfounded claims.

Likewise, the Parties’ reliance on the New York Public Service Commission’s (“NYPSC”) decision regarding the level of competition of special services in New York is misplaced. Not only is the NYPSC’s analysis seriously flawed, but the NYPSC docket was not a formal, adjudicatory proceeding, unlike the Department’s special access services investigation. VZ MA Initial Brief, at 14, 17-18. No discovery and no cross-examination of witnesses were conducted, and no evidentiary hearings were held. VZ MA Initial Brief, at 17 n.23. Moreover, it is a different state, with different performance results and, therefore, the NYPSC’s findings are not relevant here.⁹

⁸ Even the FCC contemplated that Phase II relief might result in higher rates. *See Pricing Flexibility Order*, 14 FCC Rcd at 14301-02 (acknowledging that the FCC’s “rules may have required incumbent LECs to price access services below cost in certain areas.”).

⁹ In addition, AT&T’s statement that the NYPSC rejected Verizon’s process arguments is inaccurate.

More important, regardless of the level of competition in Massachusetts, the evidence concerning Verizon MA's provisioning of special access services does not warrant the adoption of performance measurements. In particular, the Joint Competitive Industry Group ("JCIG") metrics proposed by WorldCom are unduly burdensome, requiring more than 7800 different measures and sub-measures monthly.¹⁰ VZ MA Initial Brief, at 62 n.55. This is unreasonable based on Verizon MA's minimal number of intrastate special access circuits.

Establishing performance metrics is also unjustified in light of Verizon MA's most recent service levels. During the first quarter of 2002, Verizon MA's service results are excellent, and show notable improvement resulting from performance initiatives¹¹ implemented in 2001. This is true despite the fact that some maintenance-related initiatives were delayed due to the events of September 11, 2001. VZ MA Initial Brief, at 22-23. Verizon MA's 2002 service results also reflect the elimination of backlogged special access orders in 2001, which developed during the labor dispute of August 2000. VZ MA Initial Brief, at 24-25.

AT&T Initial Brief, at 4. In its June 15, 2001 Order, the NYPSC stated that the ability of Verizon New York ("Verizon NY") to renegotiate and change appointments with retail customers, when necessary - and not count them as missed appointments - does not account fully for the 20-point difference in on-time performance rates for carrier and end-user customers. *June 15th NYPSC Order*, at 5-6. The NYPSC did not specifically reject the various significant process differences enumerated by Verizon MA in this proceeding. Exh. DTE-VZ 5-31.

¹⁰ As part of the JCIG proposal, WorldCom also seeks to change the minimum standard interval for DS0, DS1 and DS3 circuits, which is incorporated by reference in Verizon's federal access tariff. VZ MA Initial Brief, at 34 n.32; WCOM Initial Brief, at 13 n.14. WorldCom's proposal requires 7 days for DS0 and DS1 circuits, and 14 days for DS3 circuits. There is no justification for altering the minimum standard intervals of 9 business days for DS0's and DS1's (9 lines or less) and 20 business days for DS3's (5 lines or less) currently utilized by Verizon MA. Exh. ATT-VZ 2. Intervals for orders with greater circuit volumes should also continue to be negotiated.

¹¹ For example, on-time provisioning increasing from 88 to 93 percent from January 2001 to January 2002. Exh. VZ MA 3, at 41.

Likewise, the Parties fail to demonstrate the need for the Department to implement financial penalties, PAPs, and audits relating to Verizon MA's provision of special access services. Even the NYPSC declined to impose such punitive measures on Verizon NY and other carriers that are subject to the NYPSC's performance reporting requirements.¹² VZ MA Initial Brief, at 48-49, 66. WorldCom's proposal that *each* carrier customer be allowed to conduct one audit per calendar quarter, in addition to an annual independent third-party audit, is unnecessary and excessive. WCOM Initial Brief, at 16. The same is true of AT&T's newly proposed PAP, which would apply a three-percent credit to carrier special access charges if Verizon MA misses certain performance standards. AT&T Initial Brief, at 33. The evidence in this proceeding clearly does not warrant imposing those extreme requirements.

AT&T's and WorldCom's argument that interstate special access performance results should be included in intrastate audits or used to trigger intrastate penalties is also unfounded. Such action by the Department would be tantamount to regulating interstate services.

The Department has already ruled that it is preempted from investigating and regulating quality of service for federally tariffed special access services. *August Order*, at 10-11; VZ MA Initial Brief, at 5-7. The Department found that it would "use data related to the provision of interstate special access services as evidence relevant to findings we may

¹² In its Initial Brief, AT&T attempts to introduce new evidence by submitting a modified version of the NYPSC metric for "Percent On-Time ASR Response." AT&T's proposed change would require that Verizon establish a firm order date – rather than an estimated construction date - when facilities are not available. AT&T Initial Brief, at 42, Appendix 3. As Verizon MA explained in this proceeding, it is difficult to determine accurately the estimated time frame for completion of new facility construction. VZ MA Initial Brief, at 35-36, 41-42. Therefore, requiring that Verizon provide a firm order date *sooner* in the provisioning process before construction is even underway is unreasonable and impracticable, and would likely result in a greater number of Verizon "misses" – and financial penalties under AT&T's PAP proposal.

make regarding the reasonableness of intrastate special access services,” but that it “will not apply any findings or potential remedies to interstate services.” *August Order*, at 12; *October Order*, at 8. The Parties’ continuing claim that the Department should apply any measurement scheme adopted here to interstate services flies in the face of the Department’s ruling.

Finally, contrary to AT&T’s and WorldCom’s claims, Verizon’s provisioning systems are reasonable, non-discriminatory and appropriately reflect the customer-driven differences associated with the carrier and end-user customer groups, as described above. VZ MA Initial Brief, at 30-49. While AT&T’s witness admitted that she has no firsthand knowledge or experience with Verizon’s systems, she nevertheless proposed modifications to those systems based on her misunderstanding of Verizon’s processes.¹³ Tr. 475; AT&T Initial Brief, at 35-36.

For example, AT&T’s proposal – made for the first time on brief – that carriers be allowed direct access to Verizon’s RequestNet system is impracticable, infeasible, and unreasonable. AT&T Initial Brief, at 36. Not only would this substantially impair Verizon’s ability to manage its network and assign available facilities, but it would prevent Verizon from processing requests from all customers evenhandedly on a first-come, first-served basis. Contrary to AT&T’s false claims, Verizon representatives have no added capability to inform instantaneously end-user customers regarding the availability of facilities. To the extent that such

¹³ For instance, AT&T’s witness seeks to require that Verizon’s systems adopt the carrier’s requested due date, rather than the minimum standard interval. AT&T Initial Brief, at 36-37. No systems change is required to effectuate that change. If feasible, AT&T can request to expedite the order – and pay appropriate tariffed, expedited charges. What AT&T seeks, however, is to circumvent those charges by modifying the established due date to comport with its request. This is unreasonable and would not properly compensate Verizon MA for the added costs to expedite AT&T’s order.

information is available,¹⁴ it would be provided equally to carrier and end-user customers alike, upon request. Accordingly, there is no reasonable basis to investigate Verizon's provisioning systems or modify its procedures.

C. The Department Should Reject the Parties' Attempt To Broaden This Investigation To Address UNE-Related Issues.

AT&T and XO recommend that the Department override the FCC's "safe harbor" rules and require Verizon MA to convert special access circuits to UNEs. AT&T Initial Brief, at 38-41; XO Initial Brief, at 11-12. As discussed fully in Verizon MA's Initial Brief, the Department may not lawfully modify FCC rules. VZ MA Initial Brief, at 54-56. If the Parties want relief from the FCC's requirements, they can petition the FCC for a waiver. VZ MA Initial Brief, at 55-56.

Moreover, such UNE-related issues are beyond the scope of the Department's investigation, which is intended to examine Verizon MA's special access service performance results.¹⁵ VZ MA Initial Brief, at 56. The "safe harbor" rules have nothing to do with service

¹⁴ Verizon's RequestNet system has only been able to check for available facilities for DS1 and DS3 circuits for both end-user and carrier customers. Exh. DTE-VZ 5-17. Moreover, even if RequestNet identifies facilities as "available," this does not guarantee that the circuit can then be installed. This is because the system cannot discern whether those facilities are defective or in working order. VZ MA Initial Brief, at 49 n.42. That is an on-site determination, usually at the time Verizon performs installation and provisioning testing of the customer's requested circuits. VZ MA Initial Brief, at 59.

Moreover, WorldCom's assertion that Verizon representatives can override a "no facilities" check from the RequestNet system is wrong. WCOM Initial Brief, at 17. Contrary to allegations made by WorldCom, AT&T's Woburn request was processed on a first-come, first-served basis, and facilities were assigned in accordance with Verizon's procedures. Tr. 362-63. In the Woburn example cited by AT&T, a construction "build-out" was required because no facilities were available to satisfy AT&T's request at the time it was processed. Likewise, in processing subsequent requests, Verizon MA was not precluded from assigning to other carriers and end-user customers facilities as they became available.

¹⁵ XO raises a new issue on brief relating to the streamlining of the ASR process for ordering loop and transport UNEs. XO Initial Brief, at 11. XO's suggestion that the NYPSC has ordered Verizon

quality. Accordingly, the Department must reject the Parties' effort to have the Department modify the FCC's rules.

II. CONCLUSION

For the foregoing reasons, the Department should reject the Parties' claims and find that Verizon MA's provision of intrastate special access services is just and reasonable under Massachusetts law. Further, the Department should find that monthly performance reports, penalties, PAPs, and mandatory audits are not required to ensure that Verizon MA monitors and maintains its current quality service levels.

Verizon MA currently has adequate internal service mechanisms to monitor its performance levels for special access circuits, the vast majority of which are interstate in nature (*e.g.*, 99.6 percent). In addition, Verizon MA conducts ongoing internal reviews and undertakes root-cause analyses, where necessary, to improve special access service

NY to streamline the ASR process is wrong. In raising this issue, XO also ignores the commitment by all participants to treat discussions and activities of the NYPSC task force as confidential and not for public disclosure. As XO should be aware, while the task force has completed its work, it has not yet released its report. This constrains all participants, including XO and Verizon NY, from stating the recommendations of the task force in regard to streamlining the ASR process. However, Verizon NY has made clear its willingness to work with competitive local exchange carriers ("CLECs") on methods to improve the ASR process in New York and other states.

In addition, this UNE provisioning issue is irrelevant to the Department's special access performance investigation. It concerns "no spare facility conditions" when CLECs order UNE loops or transport – not special access circuits. It is a well-established principle that Verizon MA is not legally obligated to construct facilities to meet a CLEC's UNE demands where no facilities exist. *Iowa Utilities Board v. FCC*, 120 F.3d 753, 812-13 (8th Cir. 1997). When a DS1 or DS3 UNE loop request is denied, a CLEC can, however, request that special access services be constructed, and is charged accordingly.

What XO describes would simply streamline the ordering process so that a CLEC's UNE order is not cancelled for lack of facilities, but rather is marked with a notation for Verizon to proceed with a special access service request if a "no facilities" condition is encountered for the UNE order. This potential process change has no bearing on special access performance levels, as discussed in this proceeding, nor on the FCC's safe harbor rules restricting the conversion of existing special access circuits to UNEs. Accordingly, the Department must ignore XO's arguments.

performances. The Company also provides more than 50 Massachusetts carriers with customized reports detailing their individual performance results. Accordingly, no Department action is warranted.

Respectfully submitted,

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